

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

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COURT OF APPEALS  
DIVISION TWO

	)	2 CA-JV 2006-0044
	)	DEPARTMENT A
	)	
IN RE STEPHEN R.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

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APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. JV20020194

Honorable Peter J. Cahill, Judge

AFFIRMED IN PART;  
VACATED IN PART AND REMANDED

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By Michael Dynes

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Phoenix  
Attorney for Minor

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V Á S Q U E Z, Judge.

¶1 The juvenile court adjudicated Stephen R. delinquent, finding he had committed sexual abuse when he went up to a schoolmate and grabbed her breasts with both his hands. The court placed Stephen on probation for one year, found the offense is a

dangerous crime against children, and ordered him to register as a sex offender. Stephen challenges the designation of the offense as a dangerous crime against children and the requirement that he register as a sex offender, arguing they constitute cruel and unusual punishment.<sup>1</sup> We affirm the juvenile court’s adjudication of delinquency and its probation order but vacate the order requiring him to register as a sex offender and remand the case for further proceedings.

¶2 Stephen argues that “[t]he requirement to register as a sex offender for an act that might not even comply with the ‘sexual conduct’ of the offense, nor is a dangerous crime against children when the defendant is actually younger than the victim, is so grossly disproportionate to his offense as to be unconstitutional.” Stephen’s argument conflates the statute designating offenses as dangerous crimes against children, A.R.S. § 13-604.01, and the statute authorizing a juvenile court to require a minor adjudicated delinquent to register as a sex offender, A.R.S. § 13-3821.

¶3 The designation of an offense as a dangerous crime against children arises from the nature of the offense committed and the age of the child against whom it is committed. *See* § 13-604.01(M) (enumerating crimes that qualify as dangerous crimes against children if “committed against a minor who is under fifteen years of age”). In this case, Stephen was

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<sup>1</sup>The state incorrectly suggests the issue is not ripe for appeal. Contrary to the state’s assertion, the juvenile court ordered Stephen to register as a sex offender immediately. What the court ruled it would revisit in one year is the period of time during which Stephen is required to register as a sex offender—before age eighteen, through age eighteen, or somewhere between age eighteen and age twenty-five. *See* A.R.S. § 13-3821(G).

adjudicated delinquent for having committed sexual abuse, one of the offenses enumerated in § 13-604.01(M); it is undisputed that the person against whom he committed it was eleven years old at the time. The record shows Steven is nearly seven months younger than the victim.

¶4 The statute requiring certain persons to register as sex offenders also lists offenses that trigger its application. § 13-3821(A). A person must register if convicted of one of the enumerated offenses. *Id.* And a juvenile court may order a minor adjudicated delinquent for one of those offenses to register as a sex offender. § 13-3821(D). Many of the offenses are also listed in § 13-604.01, but the lists are not identical. *Compare* § 13-604.01(M)(1)(a) through (r) *with* § 13-3821(A)(1) through (19). Moreover, the term “dangerous crimes against children” does not even appear in the registration statute. Therefore, the court’s order that Stephen register as a sex offender arose from this statute, not from its designating his offense a dangerous crime against children.

¶5 Stephen contends the registration requirement is a disproportionate sentence under the analysis applied to Eighth Amendment challenges that our supreme court adopted in *State v. Davis*, 206 Ariz. 377, 79 P.3d 64 (2003). But the challenge in *Davis* was to a mandatory minimum stay in prison of fifty-two years; in contrast, Stephen was placed on probation for one year. And, as the state points out, the registration requirement has been held not to constitute punishment but to facilitate locating offenders. *See State v. Noble*, 171 Ariz. 171, 178, 829 P.2d 1217, 1224 (1992); *In re Maricopa County Juvenile Action*

*No. JV-132744*, 188 Ariz. 180, 183, 933 P.2d 1248, 1251 (App. 1996). Accordingly, the Eighth Amendment prohibition against cruel and unusual punishment does not apply to the requirement that a person register as a sex offender. Nor has Stephen shown any punishment resulting from the designation of the offense as a dangerous crime against children.

¶6 Nevertheless, we agree with Stephen that the order requiring him to register as a sex offender was improper because it is apparent from the transcript of the disposition hearing that the juvenile court believed it had no discretion in the matter. Under § 13-3821(D), however, a juvenile court is not required to order an adjudicated delinquent to register as a sex offender. Instead, the statute authorizes a court to order registration in appropriate cases. Accordingly, although we affirm the juvenile court's delinquency adjudication and probation order, we vacate the order requiring Stephen to register and remand the case for the juvenile court to exercise its discretion in determining whether to order registration.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge